

1 (9th Cir. 2009). Specifically, that Defendant UTLS National Default Services, LLC joined
2 Defendant Mortgage Electronic Registration Systems, Inc.'s Motion to Dismiss (#10).

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4 Before the Court is Defendant Mortgage Electronic Registration Systems, Inc.'s
5 ("MERS") **Motion to Dismiss** (#10, filed Nov. 10, 2010) for failure to state a claim. The Court
6 has also considered Plaintiff Saul Claros' Opposition (#18, filed Nov. 18, 2010), and MERS'
7 Reply (#25, filed Nov. 29, 2010). Defendant UTLS National Default Services, LLC has joined
8 MERS' Motion to Dismiss (#10) and Reply (#25).

9 Also, before the Court is Defendants Federal National Mortgage Association
10 ("Fannie Mae") and Lender Business Process Services' ("LBPS") **Motion to Dismiss** (#21, filed
11 Nov. 22, 2010) for failure to state a claim. The Court has also considered Claros' Opposition
12 (#28, filed Nov. 30, 2010), and Fannie Mae and LBPS' Reply (#37, filed Dec. 10, 2010).

13 Finally, before the Court is Defendants MetLife Bank, N.A. ("MetLife") and First
14 Horizon Home Loans Corporation's ("First Horizon") **Motion to Dismiss** (#38, Dec. 27, 2010) for
15 failure to state a claim. Claros did not file an opposition.

16 BACKGROUND

17 In November 2004, Claros refinanced his home located in Las Vegas. The deed of
18 trust for the refinanced mortgage loan named First Horizon as the lender, Fidelity National Title as
19 the trustee, and MERS as the beneficiary. In late 2008 or early 2009, Claros defaulted on this loan
20 and Defendant LandAmerica Onestop, Inc., acting as agent for MERS, issued a notice of default.
21 Claros subsequently hired Defendant S.B. Management, a California company, to assist him in
22 modifying the loan or to stop the pending foreclosure. Specifically, Claros alleges that S.B.
23 Management promised to pay off the refinanced loan and accept monthly payments from Claros
24 until the debt was paid in full. However, S.B. Management allegedly never followed through on
25 that promise.

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whether the factual allegations in the complaint allege a plausible claim for relief. *Id.* at 1950. A claim is facially plausible when the plaintiff's complaint alleges facts that allows the court to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Id.* at 1949. Where the complaint does not permit the court to infer more than the mere possibility of misconduct, the complaint has "alleged—but not shown—that the pleader is entitled to relief." *Id.* (internal quotation marks omitted). When the claims in a complaint have not crossed the line from conceivable to plausible, plaintiff's complaint must be dismissed. *Twombly*, 550 U.S. at 570.

II. Analysis

A. TILA

TILA requires creditors to disclose certain information about the terms of a loan to the prospective borrower. *See*, 15 U.S.C. §§ 1631–1632, 1638; 12 C.F.R. § 226.17. A creditor who fails to comply with TILA's requirements is liable to the borrower for damages. 15 U.S.C. § 1640(a). However, damages claims under TILA must be brought within one year from the date of the occurrence of the violation (*i.e.*, closing). Furthermore, TILA also provides borrowers with the right to rescind a mortgage transaction under certain parameters. 15 U.S.C. § 1635(a). However, the borrowers right of rescission must be exercised within three years after the date of the consummation of the transaction (*i.e.*, closing) or before the property in question is sold, whichever occurs first. 15 U.S.C. § 1635(f). Finally, the remedy of rescission is available only where a borrower is willing and able to tender the balance on the promissory note. *Yamamoto v. Bank of N.Y.*, 329 F.3d 1167, 1173 (9th Cir. 2003).

Claros seeks both damages and rescission under TILA. However, the loan in question closed in November 2004 and Claros commenced this action in October 2010—more than six years later. Therefore, Claros' TILA claim fails under the statute of limitations (his damages claim expired in November 2005 and his rescission claim expired in November 2007). Claros' TILA claim also fails because he has not alleged that he is willing and able to tender the

1 remaining balance on his debt. Accordingly, the Court dismisses Claros' first and second causes
2 of action.

3 **B. Wrongful Foreclosure**

4 "An action for the tort of wrongful foreclosure will lie if the trustor or mortgagor
5 can establish that at the time the power of sale was exercised or the foreclosure occurred, no
6 breach of condition or failure of performance existed on the mortgagor's or trustor's part which
7 would have authorized the foreclosure or exercise of the power of sale." *Collins v. Union Fed.*
8 *Sav. & Loan Ass'n*, 662 P.2d 610, 623 (Nev. 1983). Claros' wrongful foreclosure claim fails
9 because at the time of foreclosure he was in breach of the terms of the deed of trust. Therefore, the
10 Court dismisses Claros' third cause of action.

11 **C. NRS § 107.080**

12 NRS § 107.080 requires, among other things, the trustee or beneficiary of a deed of
13 trust to record a notice of default and election to sell the property subject to the deed of trust before
14 that property is sold. Section 107.080(3) further requires the trustee to mail a copy of the notice of
15 default and election to sell to the trustor (*i.e.*, the debtor), before the subject property is sold. A
16 sale made pursuant to § 107.080 may be declared void if the trustee or beneficiary does not
17 substantially comply with these requirements.

18 Claros alleges that the Defendants violated NRS § 107.080(3) by failing to properly
19 notify him of the trustee's sale. However, as discussed below, the Court takes judicial notice of
20 the "Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of
21 Trust," which was recorded on April 24, 2009, and substantially complies with NRS § 107.080. In
22 addition, Claros does not allege that Defendants failed to mail this document to him. Therefore,
23 Claros fails to allege sufficient facts for this claim to be plausible. Accordingly, the Court
24 dismisses Claros' fourth cause of action.

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